

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 223/MP/2017

Coram:

Shri P. K. Pujari, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 20th of June, 2018

IN THE MATTER OF

Petition under Section 79 (1) of the Electricity Act, 2003 and Sections 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, challenging the illegal and arbitrary rejection of grant of REC application of the Petitioner by Respondent.

AND

IN THE MATTER OF

ENN ENN Corp Limited
"Ashishek House", Kadampali Society,
Opp. Jeevan Bharti School,
Nanpura, Surat 395 001

Petitioner

Vs

The Nodal Officer, REC Mechanism
1st Floor, National Load Despatch Centre(NLDC) Office
Power System Operation Corporation Limited (POSOCO)
B-9, Qutab Institutional Area,
Katwaria Sarai
New Delhi-110016

Respondent

Parties Present:

Shri Pankaj Bhagat, Advocate, EECL
Shri Sumit Srivastava, Advocate, NLDC
Shri Arjun Krishnan, Advocate, NLDC

ORDER

The Petitioner, M/s ENN ENN Corp Limited, has filed the present petition under Regulations 14 and 15 of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as "REC Regulations") seeking a direction to National Load Despatch Centre (NLDC) to issue 1832.483 nos of Renewable Energy Certificates for the energy generated and supplied from its Wind power plants in the State of Gujarat during the month of April, 2016 as per the applicable regulations and procedure. The Petitioner has made the following prayers:

"(a) Condone the delay of 14 days in submitting the hard copy of application for issuance of RECs',

(b) Direct Respondent to issue 1832.483 nos. of RECs to Petitioner as verified and approved by the Respondent, SLDC pertaining to co-generation from Petitioner Units' during April, 2016 based upon application dated 14 November, 2016; and

(c) In alternative direct the Respondent to re-consider application submitted by the Petitioner on 14.11.2016."

Brief facts of the Case:

2. The Petitioner is an export house recognised by Government of India, Ministry of Commerce and Industry. The Petitioner is engaged in the business of exporting diamonds, jewellery and manufactured garments and has taken up carbon free power generation while ensuring zero carbon foot print. The Petitioner has set up the following wind power plants:

(a) 2.1 MW at Village Barvada, Taluka Jasdan in the State of Gujarat

(b) 4.2 MW at Village Dahisara, Taluka Jasdan in the State of Gujarat

(c) 6.3 MW at village Pipaliya Dhoru, Taluka Chotila and at Motadadva Village-Khadvavdi, Taluka Jasdan in the State of Gujarat.

3. All the units of the Petitioner are connected and synchronized with the Gujarat grid and were registered by the Central Agency on 29.3.2012 and 18.1.2012 for grant of RECs under the REC Regulations. The Petitioner has been obtaining REC's from NLDC since March, 2012, under the provisions of REC Regulations. During April 2016, total generation from three units was 1832.483 MWh. On 19.5.2016, SLDC Gujarat forwarded energy injection report to NLDC and to the Petitioner for the month of April, 2016. The Petitioner deposited with NLDC the requisite applicable charges for the energy generated in April, 2016, May, 2016 and June 2016. Subsequently, the Petitioner on 31.10.2016, applied to NLDC for issuance of RECs for the period April, 2016, May, 2016 and June, 2016 through web based application along with online energy injection report and all requisite details and in approved format, on website of the Respondent. The Petitioner has submitted that it could not submit the physical copy of the application within time due to Diwali vacations from 31.10.2016 till 12.11.2016 and due to non-availability of the concerned person, namely Shri Abhishek Shah, Director as he was on a visit to Japan. Therefore, the hardcopy (physical application) of online energy injection report alongwith SLDC verified energy injection report and payment details of the issuance fees were dispatched to Nodal Officer, NLDC on 14.11.2016 through courier. NLDC received the application on 15.11.2016. NLDC vide its email dated 19.12.2016 informed the Petitioner that since the application for the month of April, 2016 has been received after six months of the generation, its application would not be accepted and no RECs would be issued. The Petitioner vide its letters dated 26.12.2016 and 28.12.2016 further requested NLDC

for issuance of the RECs for April 2016. However, NLDC vide email dated 4.1.2017 reiterated its submission made in e-mail dated 19.12.2016.

4. The Petitioner has submitted that it is an admitted fact that the applicable requisite NLDC charges were also deposited by the Petitioner within time. However, due to Diwali vacations, the hard copy of the application could not be submitted within time. The Petitioner has tendered its unconditional apology for the delay/mistake of 14 days in filing of hard copy of application seeking issuance of RECs. According to the Petitioner, the mistake is procedural and rectifiable in nature and occurred for bonafide human error and for reasons explained above (which was also beyond the control of the Petitioner). The Petitioner, in support of his contention, has placed its reliance on the Hon`ble Supreme Court cases in Kailash Versus Nankhu and Ors [(2005) 4 SCC 480]; Sushil Kumar Sen vs State of Bihar [(1975) 3 SCR 942]; The State of Punjab and Anr. Vs Shamlal Murari and Anr. [(1976) 2 SCR 82]; Sangram Singh vs Election Tribunal, Kotah [(1955) 2 SCR 1] and Banwari Lal Vs Balbir Singh [Supreme court - CA No. 6567/2015] and the Commission`s order dated 20.12.2016 in Petition No. 105/MP/2016.

5. Notice was issued to the respondent to file its reply. Reply has been filed by the Respondent, National Load Despatch Centre.

6. NLDC in its reply dated 19.3.2018 has submitted that the present petition is devoid of merit as the RECs for the month of April, 2016 were not issued to the Petitioner due to its own default. NLDC has submitted that as per Regulation 7 of the REC Regulations, eligible entity is required to apply for issuance of RECs within six months from corresponding generation from eligible renewable energy projects. NLDC has stated that procedure made under REC Regulations prescribed a step by step procedure which

should be followed while issuing RECs to an eligible entity. Regulation 7 (1), (2), (4), (7) and (15) of the REC Regulations as well as Step 1 and 5 of the REC Procedure uses the word “shall” which generally denotes that a provision is imperative in nature and must be strictly complied with. According to NLDC, neither the REC Regulations nor the REC Procedure vests any discretionary power on NLDC to relax, extend or condone the delay in so far as the compliance with any of the provisions contained therein are concerned. The language of the REC Regulations and the REC Issuance Procedure is abundantly clear that the provisions contained therein are mandatory in nature and entail strict compliance on the part of an eligible entity as well as the ‘Central Agency’. The Hon’ble Supreme Court in Ramchandra Keshav Adke v. Govind Joti Chavare, [(1975) 1 SCC 559] categorically held that that when a statute provides for a thing to be done in a particular manner, it must be done in that manner or not at all. The Petitioner has categorically admitted that there was a delay of 14 days in filing of hard copy of the application. NLDC has submitted that unverified media reports regarding long Diwali Holidays in the State cannot be relied upon in legal proceedings to establish merits of a claim. Moreover, for the sake of argument, even if it is admitted that there was a long period of festivities in the State, it does not give the liberty to the Petitioner to not comply with its statutory requirements under the law. The failure on the part of the Petitioner in complying with the necessary requirement of sending a physical copy of the application within a stipulated period of six months is not excusable. Therefore, the present Petition is liable to be dismissed.

Analysis and Decision:

7. We have considered the submissions of the Petitioner and the Respondent. The main reason for non-issuance of RECs is non-submission of physical copy of the

application by the Petitioner to NLDC. On 31.10.2016, the Petitioner made an application to NLDC for issuance of RECs for the months of April, 2016, May 2016 and June, 2016 through web based application which was within stipulated time limit. However, due to Diwali vacations from 31.10.2016 till 12.11.2016, the Petitioner submitted the physical copy of the application to NLDC on 14.11.2016 through courier. However, NLDC received the physical application on 15.11.2016. NLDC vide its e-mail dated 19.12.2016, informed the Petitioner that since the application for April, 2016 was received six months after the corresponding generation, the application will not be accepted and no RECs would be issued.

8. Regulation 7 of the REC Regulations provides as under:

“7. Denomination and issuance of Certificates

(1) The eligible entities shall apply to the Central Agency for certificates within six months from corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the month.

(2) The Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible entity:

(3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.

(4) The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid or deemed to be injected in case of self consumption by eligible captive generating plant, and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures.

(5) The process of certifying the energy injection shall be as stipulated in the detailed procedures to be issued by the Central agency.

(6) Each Certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive generating plant) into the grid”

9. Detailed Procedure of REC Regulations provides as under:

“3. *STEP-WISE DESCRIPTION OF THE PROCEDURE*

...

3.1 **Step-1:** An application for issuance of Renewable Energy Certificate shall be made by the Eligible Entity to the Central Agency. The eligible entity shall apply for Issuance of REC on the Web Based Application and shall also submit the same information in physical form with the Central Agency. The online application shall be acceptable by the Central Agency only if complete in all respect. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre and shall be made in the specified format (FORMAT-3.1: “Application for Issuance of Renewable Energy Certificates to the Eligible Entities”). (ii) Print out of online application duly signed and stamped by Authorised Signatory (iii) Commissioning Certificate, only for issuance for the first month after registration. ...

3.5 **Step-5:** The Central Agency shall issue Renewable Energy Certificates to the Eligible Entity only after confirming, the claims made by the Eligible Entity, with the duly certified Energy Injection Report submitted by the SLDC. In case of any discrepancy, in the Energy Injection Report enclosed by the Eligible Entity along with Application and regular Energy Injection Report received by Central Agency from concerned State Load Despatch Centre, the information contained in regular Energy Injection Report furnished by concerned State Load Despatch Centre shall be considered as final and binding for the purpose of issuance of Renewable Energy Certificates. However, in case energy units reported under Energy Injection Report by concerned State Load Despatch Centre exceed that claimed by Eligible Entity for same period then, Central Agency shall seek necessary clarification from concerned State Load Despatch Centre before issuance of the Renewable Energy Certificates. The denomination of each REC issued would be as per the CERC REC Regulations and 1 REC would be taken as equivalent to 1 MWh of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible captive power producer) into the grid. It is clarified that any fractional component of energy as per the Energy Injection Report can be accumulated and would be considered for issuance of RECs as per the CERC REC Regulations.

3.7 **Step-7:** In case the Eligible Entity is not fulfilling any of the conditions mentioned under Step-5 and fails to provide necessary information/clarification in the matter within stipulated timeframe, the Central Agency may reject the application and shall intimate to the Eligible Entity, in writing, the reasons for rejecting the application for issuance of RE certificates.”

As per the above provisions, the eligible entity is required to apply for issuance of REC on the Web Based Application and is also required to submit the same information in physical form with the Central Agency within six months from the month of which RECs certificates

are sought. The online application shall be acceptable by the Central Agency only if it is complete in all respects. The physical application for issuance of certificate shall include (i) Energy Injection Report duly certified by the concerned State Load Despatch Centre, and (ii) Print out of online application duly signed and stamped by Authorized signatory, etc.

10. The Petitioner has submitted that on 31.10.2016, it applied to NLDC on the web based application by punching its online energy injection report with all requisite details. However, due to Diwali holidays, the physical copy of the application along with energy injection report was sent to NLDC on 14.11.2016 by courier which was received by NLDC on 15.11.2016. NLDC vide its e-mail dated 19.11.2016 rejected the Petitioner application on the ground that physical copy of the application was not submitted by the Petitioner within stipulated time of six months.

11. According to NLDC, the Petitioner had failed to submit physical applications for issuance of RECs along with relevant documents, within the stipulated time limit of six months, and thus defaulted in complying with a mandatory requirement under the REC Regulations and procedures as amended/ revised/ modified by the Commission from time to time. NLDC has submitted that neither the REC Regulations nor the REC Procedure vests any discretionary power on NLDC to relax, extend or condone the delay in so far as the compliance with any of the provisions contained therein are concerned. The Petitioner has categorically admitted that there was a delay of 14 days in filing of hard copy of application to NLDC. The Petition and the documents annexed therewith, in the present form, are not enough to ascertain the reason behind the purported delay. Moreover, for the sake of argument, even if it is admitted that there was a long period of festivities in the State, it does not give the liberty to the Petitioner to not comply with its statutory

requirements under the law. As per Regulation 7 of the REC Regulations, the Petitioner could have submitted the hard copy of its application for issuance of RECs anytime within a period of 6 months from the corresponding generation. However, the Petitioner did not take any action to comply with the same till the very end of the mandatory statutory period. It clearly demonstrates the casual approach of the Petitioner towards meeting its statutory obligations. Therefore, its application for issuance of RECs for the month of April, 2016 was rejected.

12. We are in agreement with the contention of NLDC. The Petitioner was required to submit the application for issuance of RECs in terms of Regulation 7 of the REC Regulations and Detailed Procedure made thereunder. However, the Petitioner did not comply with the provisions of the REC Regulations and Detailed Procedure. During the course of hearing, learned counsel for the Petitioner tendered un-conditional apology for late submission of the physical copy of the application along with Energy Injection Report (which was sent to the Respondent on 14.11.2016 by courier and the same was admittedly received by the Respondent on 15.11.2016). Though the application (complete in all respects) was applied/punched within the time stipulated and was within limitation, the late submission of the hard-copy of the complete form was on account of Diwali Holidays. The Petitioner has accepted its mistake regarding non-submitting the physical copy of the application within time. Learned counsel further submitted that this mistake was procedural in nature and the application was punched within the time stipulated and was within limitation. The representative of NLDC agreed that the Petitioner is entitled to RECs. However, the same was denied on account of procedural and technical issues for which NLDC has no power/authority to condone the same that it could be done by the Commission.

13. In our view, since the Petitioner has already submitted the application on-line within time and paid the NLDC processing fees, delay in submission of the physical copy of the application by 14 days though not inconformity with the Detailed Procedure, does not act in abrogation of the right of any other parties including NLDC. As an exception case, we direct NLDC to process the case of the Petitioner for grant of RECs for the month of April, 2016 within one month from the date of issue of this order. We also take serious note of the lack of diligent adherence to procedures by the Petitioner and administer a strong warning to the Petitioner to be careful in future and comply with the provisions of the REC Regulations in letter and spirit. This should not become a precedent to be quoted in future in case of non-compliance of the provisions of the REC Regulations.

14. Accordingly, the Petition is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(P. K. Pujari)
Chairperson